

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DON E. BAILEY,

Plaintiff,

v.

BANK OF AMERICA,

Defendant.

**CIVIL ACTION NO.:
1:06-cv-03096-CAM**

**BANK OF AMERICA, N.A.'S
STATEMENT OF FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE TO BE TRIED**

Pursuant to Local Rule 56.1(B)(1), Bank of America, N.A. ("Bank of America") submits this Statement of Material Facts As to Which There Is No Genuine Issue to Be Tried in support of its motion for summary judgment.

1. On or about November 5, 2005, Plaintiff Don E. Bailey ("Plaintiff") opened a checking account with Bank of America, N.A. ("Bank of America"), account number ****6014 (the "Account") (See Affidavit of Ruta Karlson ("Bank of America Aff."), filed with Bank of America's Motion for Summary Judgment, at ¶ 5.)

2. Plaintiff agreed to the terms of the governing *Deposit Agreement and Disclosures* ("Deposit Agreement") by signing the Personal Signature Card and

keeping open the Account. (See Bank of America Aff. at ¶¶ 5-6 and Ex. A (Signature Card) and Ex. B (Deposit Agreement).)

3. The Deposit Agreement states that Bank of America is not required to honor a debit against the Account when insufficient funds are available, but that it may honor such a debit and overdraw the Account, at its option. (Deposit Agreement at p. 12.)

4. The Deposit Agreement requires Plaintiff to repay Bank of America immediately for the amount overdrawn on the Account. (*Id.*)

5. The Deposit Agreement requires Plaintiff to reimburse Bank of America for its costs and legal expenses, including attorneys' fees, associated with its response to any legal process involving the Account. (*Id.* at 30.)

6. By signing the Signature Card and keeping open the Account, Plaintiff agreed to the terms and conditions of the Personal Schedule of Fees ("Schedule of Fees"). (See Bank of America Aff. at ¶¶ 5, 8 and Ex. A (Signature Card) and Ex. D (Schedule of Fees).)

7. The Schedule of Fees provides that Plaintiff's Account would be debited \$19.00 for the first overdraft, \$31.00 for the second, third, and fourth overdrafts, and \$34.00 for each overdraft after the fourth. (Schedule of Fees at p. 21.)

8. Pursuant to the Deposit Agreement, each month that Plaintiff kept the Account open, Bank of America mailed Plaintiff's monthly Account Statements and any Account-related correspondence to the mailing address that Plaintiff supplied: 2783 Browntown Road, N.W, Atlanta, Georgia 30318. (See Bank of America Aff. at ¶ 10 and Ex. F, Account Statements from November 5, 2005 to August 8, 2006.)

9. Plaintiff's failure to maintain a sufficient balance on his Account began on March 14, 2006, when Plaintiff, with \$0.58 in his Account, made two purchases totaling \$10.13. (See March 2006 Account Statement.)

10. Bank of America paid the check card debits, but Plaintiff also incurred two \$31.00 overdraft fees as a result. (See Bank of America Aff. at ¶ 12 and March 2006 Account Statement.)

11. Plaintiff failed to deposit funds sufficient to cover the negative balance. (See *id.*)

12. On July 12, 2006, Bank of America closed the Account with a debt owed to Bank of America in the amount of \$275.50. (See Bank of America Aff. at ¶ 13 and July 2006 Account Statement.)

13. Bank of America never received any written complaints directly from Plaintiff. (See Bank of America Aff. at ¶ 14.)

14. Bank of America never received any notices from a consumer reporting agency that Plaintiff had submitted a complaint about improper reporting and had requested an investigation. (*See* Bank of America Aff. at ¶ 15.)

15. Bank of America has incurred costs and attorneys' fees from making collection attempts, drafting its counterclaim, and filing for summary judgment on that counterclaim. (*Id.* at 16.)

Respectfully submitted,

**PARKER, HUDSON, RAINER & DOBBS
LLP**

By: /s/ Trishanda L. Treadwell
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Attorneys for Bank of America, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2007, I have filed electronically **BANK OF AMERICA, N.A.'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED** with the Clerk of Court using the CM/ECF system. I also hereby certify that I have mailed the document by United States Postal Service to the following non-CM/ECF participants:

Mr. Don E. Bailey
2783 Browntown Road, N.W.
Atlanta, Georgia 30318

This 4th day of April, 2007.

/s/ Trishanda L. Treadwell

Trishanda L. Treadwell